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IBA ARBITRATION COMMITTEE

# Arbitration Guide

# SRI LANKA

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# I. Background

## (i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

The use of arbitration grew in popularity following the enactment of the Arbitration Act No. 11 of 1995 (the 'Act'), which was Sri Lanka's first modern arbitration law. The main advantages of arbitration compared with domestic litigation are that it is generally a quicker remedy, proceedings are held behind closed doors and the parties have a say in the constitution of the tribunal and the arbitral procedure.

On the other hand, domestic arbitration has also met with severe criticism for its high cost, increasing formality and delay. The fact that arbitral proceedings are not binding on third parties is another disadvantage.

## (ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Most arbitrations in Sri Lanka are ad hoc. Domestic arbitrations account for the major share of arbitrations held in Sri Lanka, with international arbitrations being relatively few. The Rules of the Arbitration Centre of the Institute for the Development of Commercial Law and Practice (ICLP Arbitration Rules) are the most commonly used institutional rules. The UNCITRAL Arbitration Rules are sometimes used for ad hoc arbitrations.

## (iii) What types of disputes are typically arbitrated?

Arbitration is widely resorted to in construction, insurance and commercial disputes, particularly where an international element is involved. In addition, many leasing and micro credit agreements contain arbitration clauses.

## (iv) How long do arbitral proceedings usually last in your country?

The length of arbitral proceedings depends on the time taken to appoint the tribunal, the complexity of the case, the applicable rules (if any), and whether there are any preliminary or jurisdictional objections. Institutional arbitrations usually must be concluded within 18 months of the constitution of the tribunal. Ad hoc arbitrations may take between 18 months to three years on average.

## (v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

A party may appear in person or, if a body of persons (whether corporate or unincorporate), by an officer, employee or agent of that body, and in addition may be represented by an attorney-at-law. A foreign lawyer could be an agent of a party. However, an 'attorney-at-law' would be understood to refer to an attorney-at-law of the Supreme Court of Sri Lanka. There are no nationality restrictions on who can be appointed as an arbitrator in Sri Lanka.

## II. Arbitration Laws

- (i) **What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

The Arbitration Act, No. 11 of 1995 governs arbitration proceedings seated in Sri Lanka. The Act applies to both domestic and international arbitrations. The Act is based on the then-draft Swedish Arbitration Act of 1994, which was itself influenced by the 1985 Model Law. Many of the Act's provisions are either identical to, or very close re-enactments of, provisions of the Model Law.

- (ii) **Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

No, the Act applies to both domestic and international arbitration.

- (iii) **What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Sri Lanka is a party to the New York Convention and the Washington Convention.

- (iv) **Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

The arbitral tribunal is required to decide the substantive dispute according to the 'rules of law' chosen by the parties. If the parties have not designated the substantive law, the arbitral tribunal is required to apply the law determined by the conflict of laws rules which it considers applicable.

## III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

An arbitration agreement is required to be in writing. An agreement is deemed to be in writing if it is contained in a document signed by the parties or in an exchange of letters, telexes, telegrams or other means of telecommunication which provide a record of the agreement. An arbitration agreement may be in the form of a clause in a contract or a separate agreement. An arbitration agreement will not be enforceable if it deals with a subject matter that is contrary to public policy or is not capable of determination by arbitration.

**(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

The Sri Lankan courts will decline to hear a dispute which is covered by an arbitration agreement if the other party to the arbitration agreement objects to the court's jurisdiction in a timely manner. As mentioned in the previous answer, an arbitration agreement will not be enforceable if it deals with a subject matter that is contrary to public policy or is not capable of determination by arbitration.

**(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses are common in the construction industry. As long as they are sufficiently certain (and not 'agreements to agree'), they would be enforceable. An arbitration commenced in disregard of such a provision could result in a finding of lack of jurisdiction.

**(iv) What are the requirements for a valid multi-party arbitration agreement?**

The Act does not make any specific provision for multiparty arbitrations.

**(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

Unilateral or 'sole option' clauses have not been recognised so far by the Sri Lankan courts.

**(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?**

In general, only a party to an arbitration agreement would be bound by it. An exception may be recognised by the application of the doctrine of 'piercing the corporate veil' or the principles of agency, succession or assignment. Sri Lankan courts have not recognised the 'group of companies' doctrine so far.

**(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?**

The Sri Lankan courts have not considered the question of determining the law governing the arbitration agreement. In the absence of a contrary indication by the parties, it is likely that the substantive law of the main contract would be applied to the arbitration agreement as well.

**(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?**

Yes, the Act allows for meetings/hearings to be held outside the seat.

**(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?**

The Sri Lankan courts have not considered this question so far.

- (x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?**

Neither the Act nor the Sri Lankan courts have addressed the circumstances in which a valid arbitration agreement may become inoperable. It is likely that supervening impossibility or frustration may lead to such a result.

## **IV. Arbitrability and Jurisdiction**

- (i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

The Act does not elaborate on the types of disputes that may not be arbitrated. It is likely that criminal matters, certain family law and employment matters and certain statutory claims (for example, shareholder remedies and applications to wind up a company) would not be arbitrable in Sri Lanka. Whether a matter is capable of being submitted to arbitration may be raised in the arbitral proceedings themselves or in court. The question of arbitrability is a matter of jurisdiction.

- (ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

The court has no jurisdiction to hear and determine any matter that the parties have agreed to submit to arbitration, if the other party objects to the court proceedings. Such an objection should be taken at the earliest opportunity and in any case not later than in the formal pleadings. The party objecting to the court's jurisdiction should then raise an issue as to the court's lack of jurisdiction and move that it be tried as a preliminary legal issue. If a party participates in the court proceedings without taking these steps they would be deemed to have waived their right to arbitrate.

- (iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

Arbitrators have the power to decide on their own jurisdiction in Sri Lanka. The principle of competence-competence has been given statutory force in the Act. There is no appeal against an arbitral tribunal's ruling on jurisdiction (whether positive or negative). However, a positive ruling can later be challenged in an application to set aside the award. The courts will apply the 'de novo' standard of review to the question of jurisdiction.

## **V. Selection of Arbitrators**

- (i) How are arbitrators selected? Do courts play a role?**

The parties are free to agree on the number of arbitrators. In the absence of agreement, the Act provides that the number of arbitrators shall be three. If the parties appoint an even number of arbitrators, those arbitrators are required to appoint an additional arbitrator who will be the tribunal chair.

The procedure for appointing the arbitral tribunal is also left to the parties, with default provisions contained in the Act. If the agreed procedure or default procedure fails, either party may apply to the court to make the necessary appointments.

**(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?**

Arbitrators have both an initial and an ongoing duty to promptly disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. Unless provided otherwise in the arbitration agreement or applicable rules, challenges should be made first to the arbitral tribunal within 30 days of becoming aware of the circumstances which give rise to doubts about the arbitrator's impartiality or independence. If the challenge before the arbitral tribunal is unsuccessful, the party may appeal to the court within 30 days.

**(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?**

There are no limitations on who may serve as an arbitrator. As mentioned in the previous answer, arbitrators have a duty to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. The Act also requires the arbitral tribunal to deal with any dispute submitted to it for arbitration in an impartial, practical and expeditious manner. Arbitrators who are members of professional associations or who are appointed by arbitral institutions may also be subject to the ethical codes of those bodies. For example, arbitrators who are attorneys-at-law of the Supreme Court of Sri Lanka are subject to the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988.

**(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?**

There are no specific rules or codes of conduct concerning conflicts of interest for arbitrators. The IBA Guidelines have not received widespread acceptance in Sri Lanka. As mentioned in the previous answer, professional associations and arbitral institutions may have their own rules or codes of conduct concerning conflicts of interest, which may apply to their members or appointees.

## **VI. Interim Measures and Emergency Arbitration**

**(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Arbitrators have the power to order interim measures which are necessary to protect or secure the claim which forms the subject matter of the dispute. The tribunal's decision will be in the form of an order. Interim measures issued by arbitrators are enforceable through the courts.

**(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

A party may apply to the courts for provisional relief to maintain the status quo pending arbitration proceedings. Such an application may be made even after the arbitral tribunal has been constituted. Court ordered provisional relief will remain in force until such time as a final order resolving any dispute or an interim order is made by an arbitral tribunal.

**(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

A party may apply to the High Court for summons requiring a person to attend for examination before the arbitral tribunal and to produce to the tribunal any document or thing specified in the summons. The prior written consent of the tribunal is required to make such an application. Such summons may not compel any person to answer any question or produce any document or thing which that person could not be compelled to answer or produce in a trial in court.

If a third party to the arbitration agreement refuses or fails to appear before the tribunal in response to summons or a notice sent by the tribunal or having appeared, refuses to take an oath or affirmation or to answer any question or produce any document or do any other thing required by the tribunal, a party may apply to the High Court to order the defaulter to appear before the High Court for examination or to produce the relevant document or do the required thing. Such an application should be made after notice to the other parties and with the prior sanction of the arbitral tribunal. The defaulter is entitled to be heard before the order is made.

**(iv) Are decisions by emergency arbitrators enforceable in your country?**

The Act does not recognise emergency arbitrators and decisions by emergency arbitrators would not be enforceable in Sri Lanka. Currently the Act is in the process of being replaced by a more modern legislation which will provide for the enforcement of decisions by emergency arbitrators.

**(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?**

Sri Lankan courts do not grant anti-suit injunctions. Injunctions by arbitrators preventing parties from initiating litigation proceedings are, accordingly, unlikely to be recognised by the courts.

**(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?**

The provisions of the Act (other than those dealing with recognition and enforcement) only apply to arbitrations seated in Sri Lanka. While Sri Lanka has enacted the Mutual Assistance in Civil and Commercial Matters Act, No. 39 of 2000 to implement the Hague Convention on Taking of Evidence in Civil and Commercial Matters, it is doubtful that the Hague Convention or the Mutual Assistance Act may be used in aid of international arbitration proceedings. In the absence of an enabling legal provision, the Sri Lankan courts would not be able to provide assistance in aid of foreign-seated arbitrations.

## **VII. Disclosure/Discovery**

**(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

There is no requirement in Sri Lankan law to disclose any documents in an arbitration. The parties are free to agree on a modality for disclosure/discovery. In practice, disclosure and discovery are extremely rare in domestic arbitrations.

**(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?**

Since the law does not provide for disclosure/discovery, the parties may agree on a modality for the same including the limits.

**(iii) Are there special rules for handling electronically stored information?**

There are no special rules for handling electronically stored information in the context of arbitration proceedings in Sri Lanka.

## **VIII. Confidentiality**

**(i) Are arbitrations confidential? What are the rules regarding confidentiality?**

The Act is silent as to confidentiality of arbitral proceedings or their constituent parts (eg, pleadings, documents, the award). The main institutional arbitration rules impose confidentiality obligations on the parties and the arbitral tribunal. It is likely that ad hoc arbitrations would come under an implied duty of confidentiality.

Arbitration-related court proceedings in Sri Lanka are in general open to the public and documents filed in support of enforcement or setting aside applications would ordinarily be accessible to the public.

**(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

There are no specific provisions conferring power on the arbitral tribunal to protect trade secrets and confidential information.

**(iii) Are there any provisions in your arbitration law as to rules of privilege?**

The Act provides that an arbitral tribunal shall have the power to determine the admissibility, relevance and weight of any evidence. In practice, domestic arbitral tribunals usually follow the rules of privilege contained in the Evidence Ordinance even though they are not bound by it (the Evidence Ordinance does not apply to arbitral proceedings unless the parties agree).

The Act provides that a witness who has been issued summons by the court to give evidence or produce a document in any arbitral proceedings cannot be compelled to answer any question or produce any document that they could not have been compelled to answer or produce in a court trial.

## **IX. Evidence and Hearings**

**(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

It is not common for parties and arbitral tribunals to adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings.

**(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?**

The parties may agree on the procedure to be followed in the arbitration, subject to the provisions of the Act. This would include the hearings. The Act requires that the arbitral tribunal deals with any dispute submitted to it for arbitration in an impartial, practical and expeditious manner. The Act further requires that an arbitral tribunal affords all the parties an opportunity of presenting their respective cases in writing or orally, and to examine all documents and other material furnished to it by the other parties or any other person.

**(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

Unless the parties agree otherwise, evidence before the arbitral tribunal may be given orally, in writing or by affidavit. The general practice followed in arbitrations in Sri Lanka is to file witness statements in the form of affidavits as direct evidence, followed by oral cross-examination. Oral direct examinations are usually reserved for independent witnesses (unrelated witnesses).

**(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

There are no rules on who is eligible to be a witness. Subject to the parties' agreement, the tribunal has discretion as to whether to administer an oath or affirmation to a witness.

**(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?**

The Act does not draw a distinction between the testimony of related and unrelated witnesses. It is up to the tribunal to determine the admissibility, relevance and weight of any evidence. The relationship between a party and a witness could be one factor in the tribunal's overall assessment of the evidence.

**(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

There are no special rules for the presentation of expert testimony in arbitration proceedings and the answer to question IX(ii) would apply to this situation. There are no formal requirements regarding independence and/or impartiality of experts.

**(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

The Act does not expressly recognise the tribunal's power to appoint its own experts. In the absence of such statutory recognition, it would be necessary to rely on party agreement or the tribunal's inherent powers. However, given the adversarial nature of arbitration proceedings in Sri Lanka, it would be very rare for a tribunal to appoint its own experts. There are no requirements that experts be selected from a particular list in Sri Lanka.

**(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

Witness conferencing is not commonly used in Sri Lankan arbitrations.

**(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

There are no rules or requirements as to the use of arbitral secretaries in Sri Lanka and the use of arbitral secretaries is not common. In practice, arbitration hearings are invariably held in one of the arbitral institutions which, in addition to providing the hearing room facilities, would also provide limited secretarial services such as arranging for transcription and interpretation services and calling for advances on account of the tribunal's fees and expenses.

**(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?**

Attorneys-at-law of the Supreme Court of Sri Lanka are subject to the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988. Other professional organisations and arbitral institutions may have their own ethical codes or professional standards which may be applicable to counsel and arbitrators.

**(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?**

Arbitral institutions in Sri Lanka have not implemented any rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons.

**(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?**

Rules with regard to remote hearings have been adopted for Sri Lankan court proceedings. No rules have been adopted for remote arbitral hearings and there have not been any court decisions on the same so far. However, remote arbitration hearings continue to take place in Sri Lanka based on party consent.

## **X. Awards**

**(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

The Act prescribes certain formal requirements for an award to be valid. The award should be in writing, signed by the arbitrators constituting the arbitral tribunal or by a majority of them and state the reasons on which it is based. Where the award is signed by a majority of the tribunal, it should state the reason for any omitted signature. Reasons for the award are not required where the parties have agreed to dispense with reasons or the award is an award on agreed terms. Finally, the award should be dated and state the place of arbitration.

The Act is silent on the types of remedies that an arbitral tribunal may award. Remedies normally awarded by arbitral tribunals in Sri Lanka are declaratory relief, damages, specific performance, rectification, injunctions, interest and costs.

**(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

Punitive or exemplary damages would not be available under Sri Lankan law, even if the parties agree. The Act gives arbitrators the power to award pre- and post-award interest at the rate agreed by the parties in the arbitration agreement or, in the absence of such agreement, at the legal interest rate on the date of the award. The Act is silent on the method of interest calculation. Subject to the parties' agreement, the tribunal would be free to specify the method of calculation.

**(iii) Are interim or partial awards enforceable?**

The Act provides for enforcement of interim measures (provisional relief) ordered by arbitral tribunals, and enforcement of awards. Only a decision of the arbitral tribunal on the substance of the dispute would be enforceable as an award. Partial awards that finally dispose of a part of the main dispute would be enforceable.

**(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

The Act is silent about dissenting opinions to the award. However, the practice of issuing dissenting opinions is fairly common when the members of the tribunal have not been able to reach unanimity. No specific rules apply to the form and content of dissenting opinions.

**(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

Awards by consent are permitted by the Act. If the parties settle the dispute during arbitral proceedings, the arbitral tribunal is required to record the settlement in the form of an arbitral award on agreed terms if requested by the parties. An arbitral award on agreed terms should comply with the same formal requirements for any award other than the giving of reasons and should state that it is an award on agreed terms. Such an award has the same status and effect as any other award.

**(vi) What powers, if any, do arbitrators have to correct or interpret an award?**

Arbitrators have the power to correct computational, clerical, typographical and similar errors and omissions in an award, on their own motion or on the request of a party. In addition, a party may request the arbitral tribunal to modify an award where a part of it is on a matter not referred to arbitration, if that part can be separated from the rest of the award without affecting the decision. Where the parties have agreed, a party may request the arbitral tribunal to give an interpretation of a specific point or part of the award. Unless the parties have agreed otherwise, a party may also request the tribunal to make an additional award on any claims presented in the arbitral proceedings but omitted from the award. Each of these remedies is subject to time limits and further requirements in the Act.

## **XI. Costs**

**(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?**

The Act does not expressly state who should bear the costs of arbitration. In practice, arbitral tribunals will award costs in the final award according to the principle that costs follow the event, subject to reasonableness and proportionality. Where there is no clear winner and loser, some form of cost apportionment is normally carried out. Exceptionally the parties may be ordered to bear their own costs.

**(ii) What are the elements of costs that are typically awarded?**

The elements of costs that are typically awarded are fees and expenses of the arbitral tribunal, fees and expenses of any arbitral institution, the travelling and other expenses paid to witnesses and the legal and other costs incurred by the parties.

**(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?**

The Act states that the parties are jointly and severally liable for the payment of reasonable compensation to the arbitrators for their work and disbursements. Subject to any agreement of the parties or applicable rules, arbitral tribunals will have jurisdiction to decide on their own reasonable costs and expenses.

**(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

Subject to any agreement of the parties or applicable rules, arbitral tribunals have discretion to apportion the costs between the parties. In doing so, tribunals will consider whether the costs were reasonable and proportionate, the conduct of the parties (eg, whether any party engaged in dilatory tactics) and settlement offers.

**(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

Courts do not have specific power to review the tribunal's decision on costs. A party would have to invoke one of the grounds on which an award may be challenged (discussed in the next section) to review the tribunal's decision on costs.

## **XII. Challenges to Awards**

**(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

An award made in Sri Lanka may be challenged by filing a setting aside application in the High Court. The grounds on which the High Court may set aside an award are exhaustively defined in the Act and correspond to the grounds of setting aside in the Model Law. An application to set aside an award should be filed within 60 days of receiving the award. On average, challenge proceedings may take from one to two years and may be subject to appeal to the Supreme Court, unless the parties have agreed in writing to exclude the right of appeal.

Challenge proceedings have the effect of staying enforcement proceedings. The Act provides that where both enforcement proceedings and challenge proceedings are pending in court, the court shall consolidate the applications. The court may order that any money payable under the award should be deposited in court or otherwise secured pending the determination of the setting aside application.

**(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

The right to challenge an arbitration award is a statutory right which the parties would not be able to exclude or waive. However, the parties may agree in writing to exclude any right of appeal from the High Court to the Supreme Court.

**(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

An arbitral award made in Sri Lanka is not subject to appeal.

**(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

The High Court has the power to stay an application to set aside an award and remit the award to the tribunal to resume arbitral proceedings or take necessary measures to eliminate the grounds for invalidating the award. This power may only be exercised if all the parties to the arbitration request it, or one of the parties requests it and the court is satisfied that there are grounds for invalidating the award.

**(v) Is there a specialist arbitration court in your jurisdiction?**

The High Courts of Colombo, Jaffna and Kandy have been designated by the Minister of Justice to hear matters arising under the Act. The jurisdiction of the High Court of Colombo is presently exercised by the Commercial High Court.

**(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?**

The principle of *iura novit arbiter* has not been expressly referred to by courts in Sri Lanka. Arbitral tribunals in Sri Lanka generally do not limit themselves to relying upon only the authorities and legal arguments presented by the parties. As long as the issue was raised before the tribunal and the parties had an opportunity to address it, it is unlikely that this could be a basis to set aside the award.

## **XIII. Arbitrator Liability**

**(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?**

The Act provides that an arbitrator shall not be liable for negligence in respect of anything done or omitted to be done in their capacity of arbitrator but shall be liable for fraud. No immunity is provided to experts, translators, interpreters and other participants in arbitration proceedings.

**(ii) Does this immunity, if any, extend to criminal liability?**

The immunity of arbitrators does not extend to criminal liability.

## **XIV. Recognition and Enforcement of Awards**

**(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

An application for enforcement of an award should be made to the High Court by petition and affidavit and the other parties to the arbitration should be named as respondents. The application must be accompanied by the original award

and the original arbitration agreement, or duly certified copies. If either document is not in one of the official languages of the court or English, a duly certified translation into such official language or English must also be filed.

A copy of the application is served on the respondents, who are given an opportunity to file their objections to the application. Where there is no application to set aside the award pending (in the case of a Sri Lankan award) or the court sees no cause to refuse recognition and enforcement of the award (in the case of foreign awards), the court shall proceed to file the award and give judgment according to the award on a day of which notice shall be given to the parties.

The grounds on which a foreign award may be refused recognition or enforcement correspond to the grounds contained in the Model Law and the New York Convention. When a foreign award is subject to ongoing setting aside proceedings at the seat, the Sri Lankan court may adjourn the enforcement proceedings and may order the party resisting enforcement to provide security.

**(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

Once the High Court gives judgment according to an award and a decree has been entered, it may be enforced in the same manner as a decree entered under the provisions of the Civil Procedure Code.

**(iii) Are conservatory measures available pending enforcement of the award?**

The Act does not specifically provide for conservatory measures pending enforcement of the award. However, it would be possible to seek such measures by recourse to the court's general powers.

**(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

The Sri Lankan courts have generally followed a strong pro-enforcement approach towards recognition and enforcement of arbitral awards. In particular, the courts have confined refusing enforcement on the grounds of public policy to very strict limits. In theory, a foreign award that has been set aside by the courts at the place of arbitration could still be enforced in Sri Lanka. However, it is likely that such an award would only be enforced in exceptional circumstances such as where the decision of the seat court was palpably unreasonable or lacking bona fides.

**(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

Enforcement proceedings in the High Court may take one to two years on average and may be subject to appeal to the Supreme Court (unless the parties have agreed in writing to exclude the right of appeal). An application for enforcement should be made within one year after the expiry of 14 days of the making of the award.

## **XV. Sovereign Immunity**

**(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?**

Sri Lanka does not have legislation on state immunity. The courts follow the restricted theory of sovereign immunity under which only acts *jure imperii* (acts of a state in its capacity as a state) are entitled to immunity. It is likely that a separate waiver would be required for enforcement measures against a foreign state.

- (ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?**

There are no special rules that apply to the enforcement of an award against a state or state entity.

- (iii) Are there any requirements for arbitrations involving sovereign entities?**

No.

## **XVI. Investment Treaty Arbitration**

- (i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Sri Lanka is a party to the Washington Convention.

- (ii) Has your country entered into bilateral investment treaties with other countries?**

Sri Lanka has entered into 30 bilateral investment treaties out of which 25 are presently in force. Sri Lanka has also entered into seven treaties that contain investment provisions.

- (iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?**

No.

## **XVII. Resources**

- (i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

Cabral H, *Law & Practice of Commercial Arbitration in Sri Lanka* (Self-published 2018).

Kanag-Isvaran K and Wijeratne S S (eds), *Arbitration Law in Sri Lanka* (ICLP 2006).

- (ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

The Colombo Arbitration Week (CAW) and ICC Sri Lanka Arbitration Conference are held each year usually in August and attract a large number of participants. Several arbitration moot competitions targeting law students are held in Sri Lanka, some of which attract international participation such as the Victor's Moot competition organised by the Sri Lanka Law College. The Chartered Institute of Arbitrators (CIArb) Sri Lanka branch also conducts regular courses.

## XVIII. Trends and Developments

**(i) Do you think that arbitration has become a real alternative to court proceedings in your country?**

Arbitration has become a real alternative to court proceedings in Sri Lanka, especially in relation to construction and commercial disputes.

**(ii) What are the trends in relation to other ADR procedures, such as mediation?**

Community mediation has been in use for minor disputes since 1988 and is very widespread. Commercial mediation is very new to Sri Lanka but is gaining significant momentum due to the high cost of litigation and arbitration. Adjudication is widely used in the construction industry.

**(iii) Are there any noteworthy recent developments in arbitration or ADR?**

Sri Lanka ratified the Singapore Convention on Mediation on 28 February 2024 and enacted implementing legislation in the form of the Recognition and Enforcement of International Settlement Agreements Resulting from Mediation Act, No. 5 of 2024.

**(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?**

A draft new Arbitration Act intended to repeal and replace the Arbitration Act 1995 was prepared by a committee of experts appointed by the Minister of Justice and circulated for public comments in 2022. The draft act, which is yet to be enacted, will include features of the UNCITRAL Model Law 2006 and current international best practice.

**(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?**

The Act does not recognise third-party funding arrangements. Such arrangements are likely to breach domestic rules against maintenance and champerty. Accordingly, third-party funding arrangements are unlikely to be permitted in Sri Lanka. There have been no court decisions in relation to third-party funding.

**(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?**

Sri Lanka has not implemented a sanctions regime. Sri Lankan courts have so far not had an occasion to consider international economic sanctions as part of their international public policy. There have also been no court decisions in relation to the impact of sanctions on international arbitration proceedings.